

## Internal Revenue Service

Number: **201314017**  
Release Date: 4/5/2013

Index Number: 2601.00-00, 2601.04-00,  
2601.04-05, 9100.00-00

Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B04  
PLR-133364-12

Date:  
December 19, 2012

### Legend

Estate =

Husband =

Wife =

Revocable Trust =

Marital Trust =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Trusts =

Dear :

This letter responds to the letter dated July 29, 2012, submitted by your authorized representative, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file, pursuant to § 26.2601-1(b)(3)(iii)(A) of the Generation-Skipping Transfer Tax Regulations, a qualified physician's certification and other evidence that Husband was mentally incompetent at all times on and after October 22, 1986 until his death.

The facts submitted and representations made are summarized as follows:

Husband created Revocable Trust on Date 1 and subsequently amended it on Date 2, a date prior to October 22, 1986. Husband died on Date 3. Upon Husband's death, Revocable Trust funded Marital Trust for the lifetime benefit of Wife. Marital Trust provided that, upon the death of Wife, the property in Marital Trust would be distributed outright to the children of Husband and Wife. However, Wife also had a special power of appointment over the property in Marital Trust. Wife exercised her special power of appointment by will so as to create three equal generation-skipping trusts (Trusts). It is represented that no additions were made to Revocable Trust from and after October 22, 1986.

Husband's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, was timely filed on Date 4. Husband's Estate failed to file a physician's certificate or other evidence of Husband's mental incompetency.

The Co-executors of Husband's Estate have requested an extension of time under § 301.9100-3 to file one or more qualified physician's certifications and other evidence as required by § 26.2601-1(b)(3) stating that Husband was under a mental disability on October 22, 1986, and at all times thereafter until his death.

Section 2601 of the Internal Revenue Code imposes a tax on every generation-skipping transfer. A generation-skipping transfer is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Under § 1433(b)(2)(C) of the Tax Reform Act of 1986 and § 26.2601-1(b)(3)(i), if an individual was under a mental disability to change the disposition of the individual's property continuously from October 22, 1986, until the date of death, the provisions of chapter 13 do not apply to any generation-skipping transfer under a trust (as defined in § 2652(b)) to the extent such trust consists of property, or the proceeds of property, the value of which was included in the gross estate of the individual.

Section 26.2601-1(b)(3)(ii) defines the term "mental disability" as mental incompetence to execute an instrument governing the disposition of the individual's property, whether or not there was an adjudication of incompetence and regardless of whether there has been an appointment of a guardian, fiduciary, or other person charged with either the care of the individual or care of the individual's property.

Section 26.2601-1(b)(3)(iii)(A) provides that if a decedent has not been adjudged mentally incompetent by a court, the executor must file, with Form 706, either - (1) a certification from a qualified physician stating that the decedent was mentally incompetent at all times on and after October 22, 1986, and did not regain competence to modify or revoke the terms of the trust or will prior to his or her death, or (2) sufficient other evidence demonstrating that the decedent was mentally incompetent at all times

on and after October 22, 1986, as well as a statement explaining why no certification is available from a physician.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided by statute). Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(c) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been met. Therefore, we grant an extension of time of 120 days from the date of this letter to file the required physician's certification. The physician's certification should be attached to a supplemental Form 706 for Husband's Estate. The Form 706 should be filed with the Cincinnati Service Center at the following address: Internal Revenue Service, Cincinnati Service Center - Stop 82, Cincinnati, OH 45999. A copy of this letter should also be attached to the supplemental Form 706. A copy of this letter is enclosed for this purpose.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express no opinion as to whether Husband was under a mental disability within the meaning of § 26.2601-1(b)(3)(ii) on and after October 22, 1986. Resolution of this factual matter would be under the audit jurisdiction of the Area Director.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Associate Chief Counsel  
(Passthroughs & Special Industries)

By: \_\_\_\_\_  
Lorraine E. Gardner  
Senior Counsel, Branch 4  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures (2)

Copy of this letter  
Copy for § 6110 purposes

cc: